

STATE OF MICHIGAN
COURT OF APPEALS

AERO TAXI-ROCKFORD, C & M AIRWAYS,
INC., CHERRY-AIR, INC., CONTRACT AIR
CARGO, INC., IFL GROUP, INC., MURRAY
AVIATION, INC., RELIANT AIRLINES,
ROYAL AIR FREIGHT, INC., SPECIAL
AVIATION SYSTEMS, INC., TRAFFIC
MANAGEMENT CORPORATION, d/b/a TMC
AIRLINES, INC., and ZANTOP
INTERNATIONAL AIRLINES,

Plaintiffs-Appellants,

v

GENERAL MOTORS CORPORATION,

Defendant-Third-Party Plaintiff-
Appellee,

and

DELPHI AUTOMOTIVE SYSTEMS,

Defendant,

and

KITTY HAWK CHARTERS, INC.,

Third-Party Defendant.

UNPUBLISHED
May 30, 2006

No. 259565
Wayne Circuit Court
LC No. 01-134096-CZ

Before: Murphy, P.J., and O'Connell and Murray, JJ.

MURRAY, J. (*concurring in part, dissenting in part*).

I concur with the majority opinion that plaintiffs established a genuine issue of material fact on the agency issue. As the majority indicates, plaintiffs produced sufficient evidence that General Motors Corporation (GM) had made statements and taken actions towards third parties

that a reasonable juror could conclude established a principal-agent relationship with Kitty Hawk Charters, Inc. (KH) under an apparent authority theory. *St Clair Intermediate Sch Dist v Intermediate Ed Ass'n/Mich Ed Ass'n*, 458 Mich 540, 557-558; 581 NW2d 707 (1998); *Alar v Mercy Memorial Hosp*, 208 Mich App 518, 528; 529 NW2d 318 (1995).¹

However, I respectfully disagree with the majority's decision to treat on appeal as though plaintiffs had asserted a promissory estoppel claim. The courts are not in the business of making arguments in support of a parties' position, *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002), let alone creating actual causes of action for them. Here, it is admitted that plaintiffs did not plead a cause of action of promissory estoppel. Plaintiff did plead equitable estoppel, but the majority correctly notes that there is no such cause of action in Michigan. *American Federation of State, Co and Municipal Employees v Bank One, NA*, 267 Mich App 281, 292-293; 705 NW2d 355 (2005). And although it is true that plaintiffs did make mention of some form of "detrimental reliance", that too is not an independent cause of action, but an element for other possible causes of actions.

A defendant cannot be expected to defend against unpled claims, and that is why the court rules require that each count be separately plead. MCR 2.111(A) and (B). *Iron Co v Sundberg, Carlson & Assoc, Inc*, 222 Mich App 120, 124; 564 NW2d 78 (1997). It is elementary that the complaint sets the legal framework for the lawsuit, and it is that complaint that must control the court's disposition of a case. We should not overlook these procedural issues.

/s/ Christopher M. Murray

¹ For example, James Zantop testified that a GM representative told him that KH was going to be GM's agent for air transport. Preston Murray testified that another GM representative told him that KH was GM's agent. Although GM disputes this evidence, it is material to the agency issue and the weight of this testimony in comparison to GM's evidence could not be resolved through a motion under MCR 2.116(C)(10).